

## WORKING GROUP ON INDIGENOUS POPULATIONS

20<sup>TH</sup> session, 25<sup>th</sup> July 2002

### Agenda Item 6

Intervention by Françoise Hampson

Mr Chairman,

As interventions by NGOs and my colleagues have shown, there is still a need for standard setting in relation to indigenous populations. The Declaration has not completed that task. Whilst this is an over-simplification, it could be argued that the Declaration deals with issues which are particular to indigenous people. There is a need now to look at questions which affect all or most people but which affect indigenous peoples in a particular way.

The issues in question can be grouped. This is without prejudice to the question of whether a study should deal with all the issues in a group or whether separate issues should be dealt with in separate studies.

In the economic and social field, the issues include the relationship between indigenous groups and international institutions, including international financial institutions. We have seen part of the picture with the intervention by the World Bank but what about the impact on indigenous peoples of policies pursued by a national government at the insistence of the IMF? Then there is the question of the impact of globalisation on indigenous groups. This is not a question of reinventing the wheel and starting from scratch. The Sub Commission has already done work on this issue. The question still remains, however, of the way in which and the extent to which the impact of globalisation is different in the case of indigenous people from that of other groups. Similarly, in what way is the impact of the activities of corporations, particularly but not exclusively those concerned with mineral extraction, different in the case of indigenous populations and other groups? Or again, in the case of intellectual property rights, are there special considerations which arise in the case of indigenous people?

The second group of issues concern civil and political rights. There is the difficult question of how membership of an indigenous group is to be determined. There are at least three interested groups: the State, the indigenous group itself and also individuals. Similar questions arise in the case of membership of national and ethnic minorities. This is linked with the broader question of the distribution of the responsibility for securing protection of individual human rights. What is the responsibility of the State and what that of the group itself? Those two issues are also linked to an even broader one, the question of implementation. There are two separate questions. How should implementation be carried out? That cannot be understood until one understands what implementation means, both in general and in the specific context of indigenous people. If there is a problem at the level of the Human Rights Committee in determining what are the responsibilities of a State found to have violated the Covenant on Civil and Political Rights in an individual case, how much

more is there likely to be a problem of different understandings when it comes to implementing norms or standards.

In the area of cultural rights, there is a well established problem in protecting indigenous languages from the effect of telecommunications in a different language. I wonder whether it would be helpful to explore the following possibility. States often plead that they are not allocated enough frequencies to enable them to give indigenous groups access to radio wavelengths. Would it be possible to move forward through the ITU? Would it be possible to reach agreement on one or two agreed wavelengths worldwide for transmissions by indigenous groups. No State would be able to use the wavelengths in question. If one group were broadcasting in one country, it would not prevent another group using the same wavelength in a different country. It might also facilitate communication between different indigenous groups. Would it be helpful to explore this question further?

Finally, in the past few years there have been significant legal developments in a variety of for a. The Inter-American Court of Human Rights has delivered a judgment with important implications for indigenous groups, even though the text it was applying focuses on individual rights. The Human Rights Committee has had to address an individual complaint brought by an indigenous group. In domestic courts, there have been attempts to call governments and corporations to account. We have already heard yesterday of the landmark agreement of the UK to pay compensation to the people affected by unexploded ordnance left behind after military exercises. It is noteworthy that the compensation is to go to those affected and not to the State in question. In the case of foreign or transnational corporations, there has often been a problem in the past of establishing the jurisdiction of an appropriate court. There have been significant developments in English law in that regard in a case which concerned a group of workers, rather than an indigenous group. The implications, however, have not been lost on indigenous groups in other countries. There is a need for comprehensive monitoring of national and international legislation and litigation, not just with regard to indigenous issues but also with regard to questions which may affect the determination of indigenous issues. The use in one body of a standard set in another body offers considerable opportunities for standard setting in the very best way, from the bottom up, rather than the top down.

The working group needs to identify the issues in need of further study and to propose authors of such studies. The best argument for the continuing usefulness of this Working Group is a full agenda of studies to be undertaken. If no such studies are proposed or undertaken, it is difficult to see the need for the Group. I therefore suggest that the report of the Group to the Sub-Commission needs to identify specific areas of future study.

Thank you.